



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/084,777	02/27/2002	Jan Alan Eglén	26054-5	1278

7590 04/21/2005

Charles P. Schmal, Esq.  
Woodard, Emhardt, Naughton, Moriarty and McNett  
Bank One Center/Tower  
111 Monument Circle, Suite 3700  
Indianapolis, IN 46204-5137

EXAMINER

NELSON, FREDA ANN

ART UNIT	PAPER NUMBER
----------	--------------

3639

DATE MAILED: 04/21/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No. 10/084,777	Applicant(s) EGLEN ET AL.	
	Examiner Freda Nelson	Art Unit 3639	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 27 December 2004.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 9-14, 19-42, 60-74, 79-94, 96 and 110-172 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 9-14, 19-42, 88, 110-161 and 163-172 is/are allowed.
- 6) ☒ Claim(s) 60-74, 80-87, 89-91, 93 and 96 is/are rejected.
- 7) ☒ Claim(s) 79, 81, 89-91, 93, 94 and 96 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 23 September 2002 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>01/21/04</u> . | 6) <input type="checkbox"/> Other: _____  |

### **DETAILED ACTION**

1. This action is in response to applicant's communication filed on December 27, 2004 wherein:

Claims 9-14, 19-42, 60-74, 79-94, 96, 110-172 are currently pending;

Claims 60 and 96 are currently amended;

Claims 1-8, 15-18, 43-59, 75-78, 95, and 97-109 have been canceled; and

Claims 171 and 172 have been added.

#### ***Claim Rejections - 35 USC § 112***

As for claims 64, 66 and 70 have overcome the rejection under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The rejection is withdrawn.

#### ***Response to Amendment***

#### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

2. Claims 60 and 92 are rejected under 35 U.S.C. 102(b) as being anticipated by Walter et al. (Patent Number 5,992,570).

Art Unit: ~~3629~~ 3639

In claim 60, Walter et al. disclose that the host computer 124 uses the product identification number associated with the item to obtain a description of the item and a price of the item to obtain a description of the item and a price of the item from a price look-up file stored in memory at the host computer 124 as shown in step 404. The host computer 124 then sends this information to the processor unit 60 as shown in step 406 (col. 7, lines 48-54). Walter et al. further disclose that after all coupons (media content) have been inserted in the coupon acceptor 25 and assuming that all of the inserted coupons valid, the processor unit 60 adjusts the total price of the purchased items and causes this adjustment to be entered on the receipt to be issued to the customer (col. 9, lines 26-29). Walter et al. does not disclose that the processor is operable to adjust the pricing of the item comparing profits generated by the item at different price levels, however claims directed to an apparatus must be distinguished from the prior art in terms of structure rather than function, *In re Danly* 263 F.2d 844, 847, 120 USPQ 582, 531 (CCPA 1959). A claim containing a "recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus" if the prior art apparatus teaches all the structural limitations of the claim. *Ex parte Masham*, 2 USPQ2d 1657 (bd Pat. App. & Inter. 1987). Thus the structural limitations of claim 60 including a memory and a processor being operable to dynamically adjust pricing of the item are disclosed in Walter et al. described herein. Also as described the limitations of the claim does not distinguish the claimed apparatus from the prior art.

In claim 92, Walter et al. disclose that the apparatus includes a self-service financial terminal 18 comprising an automated teller machine (ATM) 20. (col. 3, lines 11-22).

***Claim Rejections - 35 USC § 103***

3. Claims 61-74, 80, and 97 are rejected under 35 U.S.C. 103(a) as being unpatentable over Walter et al. in view of Phillips et al. (US PG Pub 2002/0016348).

In claims 61-74, 80, and 97 Walter et al. does not disclose that the processor is operable to increase the pricing of the item when profit at a current price for the item is at least greater than a previous best profit for the item. Phillips et al discloses that the dynamic pricing system 100 may perform forecasting through known statistical methods, such as linear regression or non-linear regression analysis using curve-fitting based on exponential, power, logarithmic, Gompertz, logistic, or parabola functions. In addition, numerous averaging, smoothing, and decomposition techniques to increase the accuracy of statistical forecasts are known and may be employed by the dynamic pricing system 100 (paragraph 0036). Phillips et al. further disclose that the dynamic pricing system 100 includes a Price Optimizer (OPT) 200 that produces a set of optimal prices that maximize total profit under given constraints across all channel segments, where the constraints are defined either by the general settings of the pricing problem or by the specific rules selected by the user (paragraph 0052). Phillips et al further disclose that alternatively, the control variable within the system to determine price

Art Unit: ~~3629~~ 3639

sensitivity (currently the price of the product) can be replaced by the ratio of the seller's price of the product to the competitor's price or the difference of the two values (paragraph 0064). Phillips et al. still further disclose that because that date range over which forecasts are made may depend on the length of restocking intervals, these intervals should intervals should be chosen carefully (paragraph 0033). It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the apparatus of Walter et al. to include the dynamic pricing system of Phillips et al. in order to provide the user with a more flexible pricing device to get optimal profits.

In claim 162, Walter et al. does not disclose that the processor is operable to adjust pricing of the item based at least on demand for the item. Phillips et al. disclose that where pricing or sales of a first product effect pricing or sales of a second product, the OPT 200 cannot assume that demand (or sales) for one product is independent of demand (or sales) for other products and that cross-product price elasticity does not exist. The OPT 200 must therefore use a sales forecast from the SF 160 that accounts for this dependency, and then product pricing that maximizes sales from both products. It would have been obvious to modify the apparatus of Walter et al. to include the system of Phillips et al. in order to make sure that the inventory is available for use to satisfy the demand.

### ***Response to Arguments***

Applicant did not argue Examiner's rejections to claims 60-74.

### ***Conclusion***

4. The following is an examiner's statement of reasons for allowance:

A) The prior art for example:

(1) Walter et al. (Patent Number 5,99,570) disclose an apparatus with a memory and a processor being operable to dynamically adjust pricing of the item.

(2) Phillips et al. (US PG Pub 2002/0116348) disclose a dynamic pricing system.

However, in regard to claims 9-14, 19-42, 79, 81-91, 93-94, 96, 110-161, and 163-172 the prior art does not teach or suggest specific manner in which the price is dynamically adjusted as recited in these claims.

5. Claims 79, 81-87, 89-91 and 93-94 and 96 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. As allowable subject matter has been indicated, applicant's response must either comply with all formal requirements or specifically traverse each requirement not complied with. See 37 C.F.R. § 1.111(b) and section 707.07(a) of the M.P.E.P.

6. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.



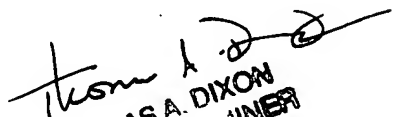
Art Unit: ~~3629~~ 3639

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Freda Nelson whose telephone number is (703) 305-0261. The examiner can normally be reached on Monday - Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Weiss can be reached on (703) 308-2702. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

FAN 04/05/2005

  
THOMAS A. DIXON  
PP